



GSA's

NEPA Call-In Update

NEPA Call-In is GSA's National Environmental Policy Act (NEPA) information clearinghouse and research service.

NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

EQAG Meets in Atlanta, Approves Final NEPA Desk Guide

Mr. Phil Youngberg, Regional Environmental Quality Advisor, GSA Region 4, hosted the Fall meeting of the GSA Environmental Quality Advisory Group (EQAG), September 29 through October 1, 1998, in Atlanta, Georgia. The meeting was led by Mr. Colin Wagner, NEPA Program Director, GSA National Office.

The primary focus of the meeting was to discuss the final revisions to the NEPA Desk

Guide. Dr. Tom King, Advisor, Cultural, Environmental and Accessibility Programs, discussed the Desk Guide edits, most of which were approved without comment. There was concern over other Federal agencies that might sign an inadequate environmental assessment (EA) or Finding of No Significant Impact (FONSI), with GSA bearing the responsibility for their actions. EQAG members suggested that this

issue could deserve new legislation, possibly in the form of an Executive Order.

The EQAG decided that the Automatic Categorical Exclusion (CATEX) "a" was too broad and new language was added to the end of the CATEX. Environmental Due Diligence Audits, in Section 9-5, was changed to Environmental Due Diligence Assessment. After all EQAG concerns had been addressed,

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NEPA Call-In Develops Series of Floodplain Determination Services

In response to numerous inquiries to assist GSA regions in making decisions about floodplain actions, NEPA Call-In has developed four categories of assistance that can be provided to the GSA regions:

- obtaining appropriate Flood Insurance Rate Maps (FIRMs),
- obtaining a commercial floodplain determination,
- consulting with the Army Corps of Engineers, and
- gathering additional data from other Federal, State, and local sources.

The first step in floodplain decisionmaking involves determining whether a property is actually located within a regulated floodplain. A current original copy of the appropriate FIRM should be ordered and consulted. NEPA Call-In can assist with ordering and

interpreting the map. After this, a determination should be made regarding the relationship of property to any nearby floodplain. There are efficient commercial services available that provide official floodplain determinations based on the property address or a plat map

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Mr. Wagner stated the NEPA Desk Guide would be forwarded to the CEQ for approval.

In other business, Mr. Jerry Hefner, Special Projects, GSA National Office, announced the creation of an Environmental Leadership Network Team (ELNT), which will help develop an environmental program at GSA. It was proposed that the EQAG and the ELNT merge.

Mr. James Biederman, Assistant General Counsel, GSA National Office, discussed the need for an Environmental Management System at GSA. To this end, Environmental Management Reviews (EMRs) have already been conducted in several Regions. Kevin Phillips, GSA Region 8, commented on his EMR experience at the Denver Federal Center.

The Arthur Andersen study on accounting requirements related to PBS's environmental cleanup costs was introduced and discussed. A list of potentially contaminated sites was distributed for comment and accuracy.

Dr. King and Ms. Susan Speer, TetraTech, introduced two new "e-book" training modules on historic preservation compliance and property disposal that they have been developing for GSA. The e-book modules were accepted by the EQAG as potentially valuable training tools. However, concerns were raised about accountability to ensure that e-book users would actually complete all applicable requirements for a project. A task force of Phil Youngberg, Region 4; Milburn Smith, Region 7; Donna Meyer, Region 5; and James Biederman was formed to address this issue.

Other training issues discussed at the meeting concerned educating each Region on different statutes and regulations for which they are accountable. A committee of Jim Biederman and Donna Meyer was formed to head this. It was also suggested that training links be placed on the NEPA Call-In website.

Further discussion on the implementation of a GSA-wide geographical information system (GIS) was discussed. A task group, comprised of Milburn Smith, Jim Biederman, and Donna Meyer, was selected to produce a comparison of several different GIS systems. The next EQAG meeting is tentatively scheduled for January 1999 in Dallas, San Antonio, or Kansas City.

NEPA Call-In, continued from page 1

with legal description. NEPA Call-In has evaluated several companies and contracted with one. It should be noted that these commercial services should not be relied upon as a sole source, but must be evaluated in balance with other information obtained by personnel responsible for floodplain actions.

In addition to the above procedures, GSA should contact the local Army Corps of Engineers (USACE) Floodplain Management Services Program Office for site-specific technical guidance (NEPA Call-In can also help accomplish this). The USACE office can provide further assistance to Federal agencies by helping interpret FIRMs and providing additional information about floodplain action.

If there is still confusion after completing the above procedures, then other Federal, State, and Local floodplain authorities should be consulted to obtain a broad base of information about the property in question. NEPA Call-In can assist in contacting these organizations. Federal organizations may include FEMA, Housing and Urban Development (HUD), or Tennessee Valley Authority (TVA). State organizations may include natural resource departments, environmental protection agencies, and the office of the State National Flood Insurance Program Coordinator. Local authorities may include city or county planning and permitting offices.

Sample Scopes of Work Available from NEPA Call-In

NEPA Call-In can assist GSA Regions that would like sample Scopes of Work (SOW) on various environmental studies. NEPA Call-In has compiled numerous SOWs, including:

- Biological assessment
- Cultural resources assessment
- Environmental assessment
- Environmental compliance support
- EIS scoping
- Environmental Site Assessment
- Archaeological site testing and evaluation for significance
- Removal and disposal of polychlorinated biphenyls (PCBs).

NEPA Call-In also has access to numerous environmental engineers and geologists with significant field experience to either develop or provide technical review of project- or site-specific SOWs. For more information or to obtain a sample SOW, contact NEPA Call-In at 202-208-6228.

Interesting Technical Inquiries (TIs)

TI-035

Environmental Justice

NEPA Call-In recently received a request for guidance on a potential environmental justice (EJ) issue at a proposed action on the United States/Mexico border. The proposed action would reallocate one of four border access lanes at a border crossing. The lane would be dedicated as an express lane, use of which would be offered to those who can afford a yearly access fee and can obtain proper security background checks. Since the majority of travelers are low-income, minority people, the requestor wanted to know whether EJ issues could apply to such an action. It was also asked whether EJ principals apply to foreigners in this case.

Summary of Findings: NEPA Call-In contacted several representatives from the Environmental Protection Agency (EPA) and GSA for guidance on the environmental justice question. NEPA Call-In spoke with representatives who believed this situation could be classified as an environmental justice case if low-income minority people are subjected to increased air pollution as a result of the action. Executive Order 12898, "Federal Actions To Address Environmental Justice In Minority Populations and Low-Income Populations," February 11, 1994, does not address its application to foreigners. However, in the context of NEPA, transboundary impact analysis would include EJ issues.

Detailed Findings: NEPA Call-In first reviewed Executive Order 12898 and determined that it requires Federal agencies that are working members of the interagency Federal Working Group on Environmental Justice to identify and address, as appropriate, 'disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.' Although GSA is not a member of the Working Group, EO 12898 requests that all independent Federal agencies comply with the provisions of the Order.

NEPA Call-In then contacted Ms. Shirley Augurson, Office of Environmental Justice, Compliance Assurance and Enforcement, EPA Region 6 at (214) 665-7401. Ms. Augurson stated she believes there could be increased air pollution in the area because of the increased congestion and time spent on the road as a result of restricting most of the traffic to three lanes. This

could be considered an environmental justice issue if it effects mostly minority and low-income populations. Ms. Augurson referred us to additional EPA representatives who deal specifically with US/Mexico border issues.

We then contacted Mr. Arturo Duran, El Paso Border Office, EPA Region 6 at (915) 533-7273, for his opinion on the potential for EJ issues with the proposed action. Mr. Duran stated this situation could fall under EJ, but there needs to be evidence that the air quality would be negatively affected by the increased congestion. He also stated EJ applies to anybody once they are located on U.S. territory.

NEPA Call-In also contacted Ms. Gina Weber, US/Mexico Border Coordinator at (214) 665-8188. Ms. Weber stated she could not provide guidance until reviewing an environmental impact assessment for such a proposed action to determine the extent to which the environment would be affected. After an assessment, it could be determined whether EJ would apply and what role EPA would play.

We then contacted an advisor, Cultural, Environmental, and Accessibility Programs, GSA National Office, who strongly believed that this is an EJ case and that EJ needs to be considered in the NEPA analysis.

NEPA Call-In then contacted Mr. Marty Halper, National Environmental Justice Advisory Council (NEJAC) at (202) 564-2601, for information about the EJ concern. NEJAC is a Federal advisory committee that was established by charter to provide advice, consultation, and recommendations to the Administrator of the EPA on matters related to EJ.

Mr. Halper stated this issue may or may not be classified as an EJ concern. In Mr. Halper's opinion, if a significant amount of current border crossing users become express lane users, there would be no EJ concern because this could potentially lessen congestion and wait time, and improve conditions at the border. However, if there is a small percentage of users who become express lane users, there is the potential for increased congestion, wait time, and pollution at the border crossing. Mr. Halper further stated if the majority of the people affected consists of minority or low-income people, then there may be an EJ concern associated with this action. He then stated it is difficult

Interesting TIs (con'd)

to comment on such cases absent an environmental assessment or other analysis, but the issue of reserving the express lane for those who can afford it does not trigger EJ concerns on its own.

TI- 0395

Environmental Assessment Guidance

NEPA Call-In recently received a request for guidance on an Environmental Assessment (EA) prepared by the State Department for developing 62 acres. The EA was prepared in 1994 but the State Department now wanted to add 24 acres to the area previously studied. It is believed that these 24 acres may be host to some endangered species and may be of some archaeological importance. The customer wanted guidance to determine whether the original EA was still valid and if a new EA could be tiered to the original.

Summary of Findings: NEPA Call-In was unable to find specific GSA or CEQ guidance regarding the length of time that an EA is considered effective. CEQ guidance states that Environmental Impact Statements (EIS) over 5 years old, for ongoing programs, should be reevaluated and supplemented, if necessary. An EA and EIS can be treated similarly in this respect. Since it was stated the proposed action would expand an existing facility for which an EA was already prepared, preparing and circulating a supplement to the original EA, rather than creating an entirely separate EA that is tiered to the original may be considered. The result would be that the original EA gets updated and it would also satisfy NEPA obligations for the new proposed action.

Detailed Findings: NEPA Call-In reviewed the PBS NEPA Desk Guide - Interim Guidance, September 1997—Chapter 8, "Supplements and Revisions to NEPA Documents." Section 8.2, "Definitions," states, "A revision is used . . . when minor changes take place that need to be recognized in the NEPA document. A supplement is a more substantial change, of sufficient magnitude that a new draft and final document must be prepared and circulated in the same manner as the original document." Section 8.3, "When to Revise; When to Supplement," states, "The CEQ regulations require preparation of a supplement if: [GSA] makes substantial changes in the proposed action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."

If the new proposed action is considered an unforeseen expansion of the original action, then item number 2 above would apply and guidance in the Desk Guide, Chapter 8, which discusses preparation of supplemental NEPA documents in detail would be followed.

Chapter 6, Section 6.12, "Supplemental EAs," states, "If conditions change after the completion of an EA (e.g., project plans change), supplement the EA as needed to accommodate the changed circumstances and address any previously unconsidered impacts. If major changes occur, however, it may be required to prepare an Environmental Impact Statement (EIS)." The customer stated the current proposed action may potentially impact threatened or endangered species or areas of archaeological importance. In this case, following guidance in 6.12 of the Desk Guide, a supplemental EA may lead to the conclusion that an EIS is warranted.

NEPA Call-In then reviewed the CEQ's "Forty Most Asked Questions" for additional guidance. Question 32, "Supplements to Old EISs," states that "if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria . . . compel preparation of an EIS supplement."

NEPA Call-In then contacted a representative from the CEQ, Office of General Counsel, who concurred with NEPA Call-In's recommendation that supplements to EISs and the length of time an EIS is considered valid can be applied to EAs as well. The representative believed that even if the original EA is less than 5 years old, the site should be revisited to evaluate any changes or new information before tiering on the old EA for the new area. However, choosing to supplement the original EA and circulate it for the new proposed action would achieve the same result. The representative we spoke with stated the five-year rule is designed to apply to long-term programmatic EAs where implementation lasts more than 5 years.

NEPA Call-In also spoke with Mr. Ken Mittelholtz, Environmental Protection Agency (EPA), Office of Federal Activities at (202) 564-7156. Mr. Mittelholtz recommended two options: first, prepare a new EA for the new proposed action and use the older EA as reference; second, take the old EA and incorporate it into a new EA that includes the new property.

TI -0398 National Security Issues Pertaining to An Environmental Impact Statement

NEPA Call-In recently received a request for guidance on national security issues as they pertain to NEPA in preparing an EIS. The caller described an EIS for the construction of an embassy and was concerned about security in light of recent embassy bombings in Africa. The caller wanted to know if NEPA requires disclosure of information that could pose a threat to national security. The caller also wanted to know if GSA had to comply with local zoning laws.

Summary of Findings: NEPA Call-In contacted several representatives from the Federal Bureau of Investigation (FBI) and the GSA for guidance. Representatives agreed that unless there is some part of the building's security plan that is classified and is not considered separate and/or unique from the main project, then security-related issues should be included in the EIS and be treated like any other aspect of the proposed action. However, if security issues are separate/unique and are considered classified, then they should be incorporated into the EIS with the classified parts safeguarded and restricted from public dissemination.

Detailed Findings: NEPA Call-In first reviewed the CEQ regulations to implement the NEPA, contained in Title 40 CFR Part 1500-1508. Title 40 CFR §1500.3 "Mandate" states, "parts 1500 through 1508 provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the NEPA of 1969, as amended except where compliance would be inconsistent with other statutory requirements;" and §1507.3 "Agency procedures," subsection (c) states:

"Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions, which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public."

NEPA Call-In then reviewed the White House website (www.pub.whitehouse.gov) for any applicable Executive Orders. Executive Order 13010, "Critical Infrastructure Protection," establishes a strategy for protecting critical infrastructures and assuring their continued operation.

NEPA Call-In also reviewed the PBS NEPA Desk Guide, but found no guidance regarding classified information. We then contacted Mr. Kenneth Gide, Section Chief, National Infrastructure Protection Center, FBI at (202) 324-0301. Mr. Gide stated that these are unresolved issues and that the EPA has requirements to publish vulnerabilities associated with potential environmental hazards and make them available to the public in a timely manner. However, it was his understanding, based on national security issues as they relate to NEPA, that if security issues are separate and/or unique from the main project and the security issues are considered classified then they should be incorporated into the EIS, with the classified parts safeguarded and restricted from public dissemination.

Mr. Gide referred us to Mr. Michael Woods, Office of General Counsel, FBI at (202) 324-6235 for further comment. Mr. Woods stated that he was unfamiliar with NEPA and forwarded us to Mr. Jim Van Ness, Office of General Counsel, Department of Defense at (703) 693-4841, for information regarding national security issues as they relate to NEPA. Mr. Van Ness stated it is correct to assume that unless there is some part of the building's security plan that is classified and is not considered separate and/or unique from the main project, then security-related issues should be included in the EIS and treated like any other aspect of the proposed action. However, if security issues are separate/unique and are considered classified, then they should be incorporated into the EIS with the classified parts safeguarded and restricted from public dissemination. He also stated that even after the project is announced, the decisionmakers would see the entire EIS, but that the public only reviews the unclassified sections. He cited the CEQ regulations to implement the National Environmental Policy Act (NEPA), contained in Title 40 CFR part 1506.6f, "Public involvement," which states:

"Agencies shall make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action."



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Interesting TIs (con'd)

We then contacted a representative from the Federal Protective Services, GSA National Office. The representative stated there are currently two GSA experts dealing with the security issues of this project. It is believed that there are no specific/unique security issues in this project that would require special attention in the EIS.

In a follow-up call, the caller asked whether GSA is required to comply with local zoning laws. NEPA Call-In addressed this issue in TI-0138, which found that GSA is not required to obtain local building permits for new construction on Federal property. Local codes are applicable in the case of buildings developed on private land to be leased to GSA.

NEPA Call-In recontacted the representative from the Federal Protective Services and it was reconfirmed that GSA is not required to apply for or obtain building or zoning permits when GSA is doing the work. However, in some cases, local jurisdictions can require GSA contractors to pay taxes or fees on materials and services. These taxes are determined by the State. NEPA Call-In was referred to GSA's Federal Acquisition Regulations, Section 52.236.-7, "Permits and Responsibilities, November, 1991, which states:

"The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result

of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work; except for any completed unit of work which may have been accepted under the contract."

NEPA Call-In then searched the "GSA Insite" Intranet web site for any GSA Orders on local zoning laws. Order PBS 3400.14A, "Implementation of the Public Buildings Amendments of 1988, Public Law 100-678, Section 6" was downloaded and reviewed.

Section 6.1, "Zoning Laws," states, "...PBS will consider all requirements (other than procedural requirements) of local zoning laws and other local laws relating to landscaping, open space, minimum distance of building from the property line, maximum height of a building, historic preservation, and esthetic qualities of a building, and other similar laws. Regional Staff and/or their contract consultants, architect-engineers (A/E's), etc., are to fully address such laws and requirements in their planning and design documents." Federal Protective Services also stated that GSA should use whichever requirements are more stringent and that the GSA should be as cooperative as possible with local agencies, as long as it does not impede with the project.

We then contacted the Office of the Commissioner, GSA National Office, to inquire whether additional guidance on whether it is GSA's policy to comply with local zoning laws, but were unable to locate any additional guidance.

NEPA Call-In is designed to meet the NEPA compliance needs of GSA's realty professionals.

NEPA Call-In Update

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TI-421

Need more information?

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